



GOVERNMENT OF INDIA

Chandigarh Administration Gazette

Published by Authority

NO. 159] CHANDIGARH, MONDAY, NOVEMBER 11, 2024 (KARTIKA 20, 1946 SAKA)

CHANDIGARH ADMINISTRATION
DEPARTMENT OF PERSONNEL
(Personnel-II Branch)

NOTICE

The 11th November, 2024

No. 420277-IH(11)-2024/16057.—In pursuance of Sub Rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, I hereby give notice to Sh. Puneet Sharma S/o Late Sh. Bakshish Singh, Clerk (Common Cadre) O/o Engineering Department, UT, Chandigarh that his services shall stand terminated with effect from the date of period of one month from the date on which this notice is served on.

(Sd.) . . .,

Chandigarh :
The 8th November, 2024.

AKHIL KUMAR, DANICS
Additional Secretary Personnel,
Chandigarh Administration.

Signature Not Verified
Digitally signed by
Jalinder Kumar
Date: 2024.11.11
16:18:36 IST
Reason: Published
Location:

(2337)

*This is Digitally Signed Gazette. To verify, visit :
<https://egazette.chd.gov.in>*

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 1st November, 2024

No. 13/2/164-HII(2)-2024/16596.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **40/2021** dated **10.09.2021** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

PARAMJIT SHARMA, H. NO. 539, VILLAGE RMPUR SIURI, MAHADEV COLONY,
SURAJPUR, DISTRICT PANCHKULA. (Workman)

AND

M/S A.R. ASSOCIATES, PLOT NO. 191, INDUSTRIAL AREA, PHASE-II, CHANDIGARH
THROUGH ITS MANAGER.(Management)

AWARD

1. Paramjit Sharma, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that on 05.03.2011 claimant-workman (*here-in-after 'workman'*) was appointed as Store Keeper by the respondent-management (*here-in-after management*). The workman remained in the continuous employment up to 26.05.2020 when his services were illegally & wrongfully terminated by the management without assigning any reason and notice. On 26.05.2020 the workman was on leave due to some urgent domestic work. On 27.05.2020, when workman went to attend his normal duties, he was refused work by the Manager of the factory without assigning any reason and notice. Refusal of work which amounts to termination is retrenchment under Section 2(oo) of the ID Act. The management has also violated Section 25F of the ID Act. No charge sheet was issued, no inquiry was held and the workman was not paid retrenchment compensation at the time of termination. Violation of the same makes the termination order void. On 23.06.2020, workman lodged a complaint with the Labour Inspector, U.T. Chandigarh for his reinstatement. The Labour Inspector fixed number of dates for an amicable settlement but the management refused to take back the workman on duty. The management did not appear before the Labour Inspector on last two dates fixed for settlement. For his reinstatement workman served upon the management a demand notice dated 08.10.2020. The management neither denied the contents of demand notice nor took the workman back on duty. The Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh was requested for his intervention. The Conciliation Officer intervened but the dispute could not be settled with the stipulated period as the management did not appear before the Conciliation Officer on any date fixed for settlement. Action of the management is illegal, wrongful, motivated, against the principle natural justice and unfair labour practice. From the date of termination to till date, the workman remained un-employed. Prayer is made that the workman may be reinstated with full back wages along with continuity of service with full attendant benefits and without any change in his service condition.

3. Notice issued to the management for 13.09.2021 was received back executed through Aman - Office In-charge. None appeared on behalf of the management despite service, thus, vide order dated 13.09.2021 the management was proceeded against ex-parte.

4. In ex-parte evidence the workman Paramjit Sharma examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A'. For corroboration the workman examined AW2 Prem Sagar - Labour Inspector, O/o Assistant Labour Commissioner, U.T. Chandigarh. On 10.09.2024 Learned Representative for the workman closed ex-parte evidence.

5. I have heard arguments of Learned Representative for the workman and perused the judicial file.

6. In order to prove its case, the workman Paramjit Sharma examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity. From the oral testimony of AW1 it is made out that the workman remained in the employment of the management as a Store Keeper w.e.f. 05.03.2011 to 26.05.2020. The plea taken by the workman that on 27.05.2020 when he went to attend his normal duties, he was refused work by the Manager of the factory without assigning any reason & notice, would prove that the services of the workman were terminated with verbal order by the management w.e.f. 27.05.2020. The workman alleged that the management neither issued any charge-sheet nor conducted any inquiry nor paid retrenchment compensation at the time of termination of his services and thus violated the provisions of Section 25F of the ID Act. It is further alleged by the workman that for seeking reinstatement he lodged a complaint to the Labour Inspector on 23.06.2020. The aforesaid plea of lodging complaint with Labour Inspector stands proved from the testimony of AW2 Prem Sagar - Labour Inspector, who deposed that he has brought the complete summoned record i.e. complaint dated Nil of the workman filed before the Labour Inspector, U.T, Chandigarh on 23.06.2020. Copy of same is Exhibit 'W1'. On receiving the summons, the management appeared before the Labour Inspector, Sector 30, Chandigarh on so many dates. The management did not deny the date of appointment, date of termination. The dispute could not be settled before the Labour Inspector, U.T. Chandigarh and the workman was advised on 07.10.2020 to approach the appropriate authority for his dispute, if he so desired. Copy of zimni orders from dated 09.07.2020 to 07.10.2020 are Exhibit 'W2'. From the oral testimony of AW1 coupled with documents Exhibit 'W1' and Exhibit 'W2', it is duly proved on record that immediately after termination of his services, the workman approached the Labour Inspector seeking reinstatement in service. The parties could not arrive at settlement before the Labour Inspector, thus the Labour Inspector advised the workman to approach the Appropriate Authority.

7. The workman / AW1 pleaded in the claim statement and in affidavit Exhibit 'AW1/A' that for his reinstatement workman served upon the management a demand notice dated 08.10.2020. The management neither denied the contents of demand notice nor took the workman back on duty. The Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh was requested for his intervention. The Conciliation Officer intervened but the dispute could not be settled within the stipulated period, as the management did not appear before the Conciliation Officer on any date fixed for settlement. Action of the management is illegal, wrongful, motivated, against the principle natural justice and unfair labour practice. From the date of termination to till date, the workman remained un-employed.

8. The evidence led by the workman has gone un rebutted and unchallenged as the management despite service of notice, did not bother to contest the claim statement and preferred to be proceeded against ex-parte. There is no reason to disbelieve the evidence led by the workman. It is proved that the workman has completed 240 days of continuous service in 12 calendar months preceding termination of his services w.e.f. 27.05.2020. The workman has fulfilled the requirement of continuous service as required under Section 25B of the ID Act. Once the workman falls within the purview of Section 25B of the ID Act, thus the provisions of Section 25F of the ID Act is attracted which lays down certain conditions to be complied by the employer

before terminating the services of the workmen. For better appreciation Section 25F of the ID Act is reproduced as below :-

"25F. Conditions precedent to retrenchment of workmen. - No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;*
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and*
- (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."*

9. In the present case, the management is proved to have terminated the services of the workman without following the mandate of Section 25F of the ID Act. Consequently, the management's verbal order of termination of services of the workman w.e.f. 27.05.2020 is illegal and hereby set aside. The workman is held entitled to reinstatement with continuity of service along with 50% back wages.

Relief :

10. In the view of finding above, this industrial dispute is ex-parte allowed. The workman is held entitled to reinstatement with continuity of service along with 50% back wages. The management is directed to comply with the Award within three months from the date of publication of the same in Government Gazette failing which the management shall be liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this Award till its realisation. Appropriate Government be informed. Copy of this Award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

Dated : 10.09.2024.

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 1st November, 2024

No. 13/2/166-HII(2)-2024/16598.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **95/2020** dated **30.08.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

KULWINDER SINGH S/O SH. BHAJAN SINGH, H.NO.4075, SECTOR 46-D, CHANDIGARH.
(Workman)

AND

M/S APEX MOTORS, PLOT NO.45, INDUSTRIAL AREA, PHASE - II, CHANDIGARH.
(Management)

AWARD

1. Kulwinder Singh, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the workman has been working as Service Advisor since 01.10.1999 continuously and was in receipt of last wages of ₹ 19,000/- per month after deduction of EPF contribution. On 14.05.2020, the workman after the lock-down period, was called by the management and pressurized to submit the resignation and he was intimated that his services are no longer required. The workman intimated the management that termination during the COVID-19 is illegal and banned by the Government but the management illegally and forcibly stopped the entry of the workman. Thus, the management illegally and arbitrarily terminated the services of the workman w.e.f. 14.05.2020, without issuing any charge sheet, calling explanation and without holding any domestic inquiry. No letter of termination has been issued to the workman. During tenure of his service there has been no letter / warning / charge sheet issued to the workman by any official of the management up to the date of illegal termination. The workman again approached the management along with other workmen for reporting for duty on 14.05.2020 but the management selected workmen to report for their duties and intimated the workman that his services are already terminated by the management and he was not allowed to report for duties. During tenure of service, workman and performance of the workman has been satisfactory and to the entire satisfaction of his superior / seniors. The workman performed his duties with dedication. The post of the workman is permanent / regular. The workman had worked more than 240 days continuously with the management without any break. The management had indulged in unfair labour practices. The management has not even paid wages for the period January, 2019, February, 2019, January, 2020 to May, 2020 and also did not cover the workman under the Employees' State Insurance (ESI) Scheme / Act as well as under the Employees Provident Fund & Miscellaneous Provisions (EPF) Scheme / Act from the date of applicability of the said Schemes / Acts. The workman reserves his right to file separate complaint before the said authorities. Besides, the workman has not been provided the statutory benefits of earned leave, casual leave, sick leave, national and festival holidays, bonus under the Payment of Bonus Act, 1965, gratuity under the Payment of Gratuity Act, 1972, over time at twice the rate of ordinary wages for working on all weekly off / Sundays, holidays, national and festival holidays. No register of adult worker has been maintained by the management. The management has not issued any appointment letter, identity card, wage slip, leave card, ESI identification card etc. The management did not issue show cause notice, charge sheet or did not hold inquiry while terminating the services of the workman. The act & conduct of the management in terminating the services of the workman is violation of provisions of

the ID Act. Workman has been forced to remain unemployed and is continuing to be out of employment due to high headedness of the management-employer. The management has retained the juniors and new appointment has been made against the post on which the workman was working. The act of the management in terminating the services of the workman without adopting proper procedure is prima-facie illegal, arbitrary and unjust. As such, it amounts to illegal termination. Prayer is made that direction may be granted to the management to reinstate the workman with continuity of service along with full back wages and consequential benefits on the same post and same terms & conditions with seniority.

3. On notice, management contested the claim application by filing written statement on 04.01.2023 wherein preliminary objections are raised on the ground that delinquent (*here-in-after 'workman'*) has not completed 240 days continuous service during the preceding 12 months. Thus, the present reference is not maintainable and liable to be dismissed. The workman's demand notice is not legally maintainable and is liable to be dismissed solely on this basis without regard to any other ground averred in the written statement. The reference sought in the present demand notice / statement of claim is unlawful under the Law. The demand notice / statement of claim reveals that the workman preferred to remain un-authorised absent and eventually abandoned the job. The present claim statement is un-sustainable for a variety of reasons including those listed below :-

- a) The workman was working on coveted post of Service Advisor i.e. Managerial in staff with the management, thus cannot be termed as a workman as defined under Section 2 of the ID Act.
- b) The worker is proficient at his Service Advisor job and such a person is in high demand in the market. As such, the worker has availed better opportunity while abandoning job of the management.
- c) During course of employment with the management, various helpers and technical staff deployed in workshop were under his direct control. The nature of employment of the workman remained supervisory. As such, the present demand notice is not maintainable in the eyes of law. Various technical staff / employees were reporting to the workman and the said workman was responsible for the output of the said employees working under him. The worker was taking various administrative decision at his own. The workman is not a 'workman' as defined under the ID Act.
- d) The workman may be directed to approach to avail civil remedy, if any, available to the worker with the Court having jurisdiction because the dispute as raised under Section 2A of the ID Act is not maintainable in the eyes of Law. The ingredients of Section 2A of the ID Act are not made out at all.
- e) The worker has got better employment opportunity with increased income and was not interested to work with the answering management. Otherwise, the workman may be directed to immediately report for duty and the management has no hesitation in case he resumes duty forthwith. The workman was offered similar offer during reconciliation proceedings before the Assistant Labour Commissioner, Chandigarh but despite written requests the workman failed to join the duty with the management. Present statement of claim has been filed with the oblique motive and is not maintainable.
- f) The management has not refused to retained the workman after lockdown. In fact, before the lock-down he dismantled one Tata Sumo vehicle under his supervision but prior to re-assembly there was total lock down. During the lock-down he travelled to his home town without obtaining the station leave. Following his un-lock, management approached him on several times to join duty and assemble the car. However, the worker failed to report for duty. In his absence, other personnel were asked to build the car but they were unable to trace out all the vehicle's part. The management requested the worker to resume duty, locate the missing car parts and perform the vehicle repair project under his supervision and

control. However, the worker refused to report for duty and opted to be absent from work on a regular basis, causing the management to incur losses as a result of his un-expected absence.

- g) The workman has not approached this Court with clean hands and concealed the valuable material in the statement of claim.
- h) The workman is gainfully employed and has wrongly averred in the prayer clause that he is entitled for reinstatement and back wages.

4. The worker has prepared some fake documents to support his claim. Upon getting a hint, the management moved an application that record of the management was burnt in fire and the worker may be directed to produce the documents and supply copies of the same to the management. Upon which the worker had produced the photocopies of fake documents. Comments on each of such documents supplied to the management are as under :-

- a)(1) The training deputation letter dated 31.01.2001; undated certificates i.e. (2) for the period April, 2002 till date, (3) employment till 03.05.2003, (4) employment in 31.01.2006, (5) employment till September, 2007 are not issued by the management and are fake documents. The management had not signed and / or issued the said documents.
- (b) The certificate dated 21.07.2002 is neither signed nor issued nor pertains to the management and is a fake document.
- (c) The emails are fake documents. The worker has tempered some email, unsigned invoice copies and has inserted his name in email / invoice with malafide intention to cheat the management as well as this Court.
- (d) The workman has nothing to do with the unsigned job cards and invoices.
- (e) The certificate dated 26.02.2018 is a genuine document showing employment of worker as Manager Services and drawing of his wages @ ₹ 1,98,000/- p.a. At last workman was drawing wages @ ₹ 2,28,000/- p.a.
- (f) The ITR of the worker is fake and false document which is not assigned / issued by the management.

No other document has been supplied to the management by the workman. This Court may initiate legal action against the workman for utilising the fake documents in the Court proceedings. Strict action may be initiated against the workman to curb such unfair practice.

5. Further on merits, it is admitted to the extent that the worker was employed as Service Advisor. The last drawn salary of workman was ₹ 19,000/- per month subject to ESI and EPF deductions from the same. The worker joined as Service Advisor w.e.f. 01.12.2017. The workman has wrongly stated his date of employment as 01.10.1999. The workman has not reported on duty on 14.05.2020 or thereafter. If the services of the workman were terminated w.e.f. 14.05.2020, then he might have raised demand notice forthwith. However, the present ante-dated demand notice reveals that workman has raised the demand notice after more than two months because he was not in town. Otherwise, also the worker has not reported for duty as there was lock-down in Chandigarh on 14.05.2020. The management has not terminated the services of the workman due to COVID-19 or otherwise as is falsely contended. Neither Government has passed contended rules nor the worker report for duty as is falsely projected. The establishment of management remained under lock-down till 10.06.2020 under the Government instructions. None of the worker had reported for duty on 14.05.2020 in view of the lock down. It is further stated that the workman can resume his duties without back wages for the period of his absence. However, the worker has got better job / work and is not interested to join duty with the management. The services were not terminated and the workman has not reported for duty on 14.05.2020.

The allegations of alleged termination from the job are false and baseless. The establishment remained under lock down from March, 2020 till 10.06.2020. There was no question of issuance of charge sheet or conducting inquiry. The management has not indulged in unfair labour practice rather the workman has levelled wrong allegations. The workman has not served continuous service for 240 days in the preceding 12 months. The workman was covered under the ESI and EPF provisions as per applicable laws. The management has paid wages to the workman as per law and has deducted the wages for the period of absence of the workman from the job. Wages stand paid to the workman. The workman has received following amounts from the management

<u>Amount Received</u>	<u>Date of Receipt of Payment</u>
₹ 1,500/-	13.01.2020
₹ 5,000/-	15.01.2020
₹ 5,000/-	08.02.2020
₹ 2,000/-	15.02.2020
₹ 5,000/-	28.02.2020
₹ 7,000/-	02.03.2020
₹ 3,000/-	14.03.2020

The workman has received above wages and suppressed the material facts from this Authority with ulterior motive. The workman has already filed a separate application LCA No.65 of 2020 under Section 33C(2) of the ID Act and a case claiming gratuity amount. The said cases are pending for adjudication. The workman has levelled false allegations of non-payment. The management had maintained the record in provisions to various applicable Laws. The management is small Tata passenger cars Service Centre and is not an 'industry'. The workman has no authority to represent other employees of the management in the present demand notice. The present demand notice under Section 2A of the ID Act does not confer power to the workman to raise such dispute on behalf of other employees. The workman has wrongly claimed the arrears of wages etc. There is no arrears of wages or other dues payable to the workman. Rather the workman has not given one month's notice to the management while abandoning the job. The management had paid all benefits to the workman from time to time. The workman is not entitled to gratuity although he had filed a separate application dated 17.07.2020 claiming gratuity. The workman has not worked on over time and is not entitled for the payments on that account. All the required registers are maintained by the management. The weekly rests were given to the workman. The demand notice is beyond the scope of Section 2A of the ID Act and not maintainable. The management had issued documents during the course of employment to the workman. The workman moved an application for production of alleged documents with the management. Upon which the workman had produced on record one identity card with some other fake documents to establish his employment with the management during the disputed period. ESI identity card is being issued by the ESI Corporation to the eligible person. The management is not responsible for the contended ESI lapses. The management has not terminated the services of the workman and was not under compulsion to issue process for initiating alleged disciplinary action against the workman. There was no necessity to issue contended show cause notice. The workman remained integral part of the establishment and in his absence, the work suffered. The workman may be directed to report for duty immediately to avoid further harassment to the management. The workman was not forced to remain unemployed rather he has abandoned the job and is not reporting for duty. The management has not terminated the services of the workman. He can join the services forthwith. The management is not likely to wait for the workman to join duty for indefinite time. Rest of the averments of claim application are denied as wrong and prayer is made that the demand notice being false may be filed without making any reference to the competent authority.

6. The workman field rejoinder wherein the contents of the written statement except admitted facts, are replied as misleading and misconceived and averments of claim statement are reiterated.

7. From the pleadings of the parties, following issues are framed vide order dated 02.02.2023:-

1. Whether the termination order is illegal ? OPW
2. If issue No.1 is proved in affirmative, whether the workman is entitled to reinstatement with continuity of service, full back wages and all consequential benefits, as prayed for ? OPW
3. Whether the claimant is not a 'workman' as defined under Section 2(s) of the ID Act, 1947 ? OPM
4. Whether the claim statement is not maintainable ? OPM
5. Relief.

8. In evidence, workman Kulwinder Singh examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with copies of documents Exhibit 'W1' to Exhibit 'W10'.

Exhibit 'W1' is copy of training certificate dated 21.07.2002.

Exhibit 'W2' is copy of experience certificate for the period 02.08.1999 to 03.05.2003.

Exhibit 'W3' is copy of training certificate dated 31.01.2001.

Exhibit 'W4' is copy of salary certificate dated 26.02.2018.

Exhibit 'W5' is copy of identity card.

Exhibit 'W6' is copy of experience certificate for the period 02.10.1999 to 31.01.2006.

Exhibit 'W7' is copy of Income Tax Return for the Assessment Year 2007-08.

Exhibit 'W8' is copy of approval of claim consisting of 3 pages.

Exhibit 'W9' is copy of job card consisting of 7 pages.

Exhibit 'W10' is copy of tax invoice dated 20.05.2016.

9. In cross-examination management had put photocopies of documents Mark 'M1' to Mark 'M18' to AW1.

Mark 'M1' is print out of e-mail dated 13.12.2011 sent by Anil Jaswal to Kulwinder on the subject 'Sumo'.

Mark 'M2' is print out of e-mail dated 04.09.2012 from Apex Motors to Tarlok Singh with copy to Kulwinder on the subject 'Certificate of TATA Motors'.

Mark 'M3' is print out of e-mail dated 15.02.2023 from Apex Motors to Kulwinder on the subject 'Service Schedule'.

Mark 'M4' is print out of e-mail dated 04.03.2013 from Kulwinder Singh to Anil Jaswal on the subject 'Extended Warranty Detail'.

Mark 'M5' is print out of e-mail dated 09.07.2013 from Apex Motors to Kulwinder on the subject 'Estimate'.

Mark 'M6' is print out of e-mail dated 15.07.2014 from Apex Motors to Kulwinder on the subject 'Photos'.

Mark 'M7' is print out of e-mail dated 19.07.2014 from Anil Jaswal to Kulwinder on the subject 'Fwd: form 1'.

Mark 'M8' is print out of e-mail dated 19.07.2014 from Anil Jaswal to Kulwinder on the subject 'Fwd:form 2'.

Mark 'M9' is print out of e-mail dated 19.07.2014 from Anil Jaswal to Kulwinder on the subject 'Fwd:form 3'.

Mark 'M10' is print out of e-mail dated 26.06.2015 from Apex Motors to Rajesh K. Talwar on the subject 'Fwd: Bank Details of Apex Motors'.

Mark 'M11' is print out of e-mail dated 30.05.2016 from Apex Motors to Kulwinder on the subject 'amc docs'.

Mark 'M12' to Mark 'M18' are copies of voucher dated 13.01.2020, 15.01.2020, 08.02.2020, 15.02.2020, 28.02.2020, 02.03.2020 and 14.03.2020 against which salary was paid to Kulwinder Singh.

10. On 09.01.2024 Learned Representative for the workman closed evidence in affirmative.

11. On the other hand, management examined MW1 Anil Jaswal - General Manager, M/s Apex Motors, who tendered his affidavit Exhibit 'MW1/A' along with copies of documents Exhibit 'M1' to Exhibit 'M9'.

Exhibit 'M1' is print out of PF portal profile of the workman.

Exhibit 'M2' to Exhibit 'M8' are original payment vouchers dated 13.01.2020, 15.01.2020, 08.02.2020, 15.02.2020, 28.02.2020, 02.03.2020 and 14.03.2020.

Exhibit 'M9' is certified copy of the cross-examination dated 08.09.2022 of Kulwinder Singh record in CA-38/2022 recorded by Controlling Authority under Payment of Gratuity Act.

12. In cross-examination the workman had put documents Exhibit 'W1' to Exhibit 'W8' and Exhibit 'W11' to Exhibit 'W13' to MW1.

Exhibit 'W11' is order bearing No.RO/CHD/RTI/APPEAL/2004-2025/A-15/218 dated 12.06.2024 passed by the First Appellate Authority / Regional Provident Fund Commissioner-II, Chandigarh.

Exhibit 'W12' is subscriber ledger card as on 19.06.2024 of Employees Provident Fund Organisation in favour of Kulwinder Singh having Account No./ Member Id PBCHD00294520000000018.

Exhibit 'W13' is subscriber ledger card as on 20.05.2024 of Employees Provident Fund Organisation.

13. On 16.08.2024 Learned Representative for the management closed oral evidence and on 29.08.2024 closed documentary evidence.

14. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below :-

Issues No. 1 to 3 :

15. Onus to prove issue Nos. 1 & 2 is on the workman and onus to prove issue No.3 is on the management.

16. All these issues are taken up together being interconnected and in order to avoid repetition of discussion.

17. To prove its claim workman Kuldwinder Singh examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed that the contents of the claim statement in toto, which are not reproduced here for the sake of brevity. AW1 supported his oral version with the documents Exhibit 'W1' to Exhibit 'W13'.

18. On the other hand, management examined MW1 Anil Jaswal - General Manager, Apex Motors who vide his affidavit Exhibit 'MW1/A' deposed the entire contents of written statement which are not reproduced here to avoid repetition. MW1 supported his oral version with documents Exhibit 'M1' to Exhibit 'M9'.

19. From the oral as well as documentary evidence led by the parties, it comes out that the workman has alleged that he was employed with the management w.e.f. 01.10.1999 and remained in continuous service

up to 14.05.2020 when his services were terminated with verbal order. On the other hand, the management has admitted that the workman was employed with the management but disputed his date of appointment. The management has alleged that the workman joined the management w.e.f. 01.12.2017. The management further disputed the alleged termination on 14.05.2020 and has taken the plea that the workman remained in employment of the management up to 23.03.2020 and thereafter the workman abandoned the job. To my opinion the best evidence to ascertain the service period of the workman-employee is the service record maintained by the employer. In the present case, the management did not bring into evidence the service record of the workman. MW1 in his cross-examination stated that the record maintained by the management of the workman including other workers was burnt during the lock down period. He does not remember the exact date and month of the outbreak of fire incident. MW1 denied the suggestion as wrong that no fire incident took place. MW1 in his cross-examination stated that he will have to check the record of the management, if any DDR, publication was made regarding the said incident. MW1 stated that he has got the original attendance register today in the Court. To my opinion, the explanation for non-production of record of the workman given by the management that it was burnt in the fire outbreak is not acceptable as remaining cross-examination of MW1 was deferred on 03.05.2024 providing him an opportunity to produce the record of appointment letter, job card, record of DDR and publication. MW1 when recalled on 02.08.2024 for his remaining cross-examination stated that he has checked the record of EPF prior to year 2016 on the portal of Provident Fund Department and the same is not available, thus he cannot produce the same. MW1 further stated that the job card for the period 01.01.2011 to 31.03.2011 is also not available on the portal of Tata Motor thus the same cannot be produced. He has also not brought the record of DDR as the same is not available with him. No publication was issued regarding the alleged incident of outbreak of fire. The attendance register produced by MW1 in his cross-examination carries no authenticity as MW1 in his cross-examination admitted as correct that there are no signatures on the attendance register of any the employees. The signatures of the employees are taken on the salary slips. The version of MW1 that signatures of the employees are taken on the salary slips also does not stand proved as no such salary slip are produced and proved into evidence. Non-production of service record of the workman raises strong presumption against the management and therefore, it cannot be disbelieved that the workman remained in continuous employment of the management from 01.10.1999 to 14.05.2020. Admittedly, last drawn monthly wages of the workman were ₹ 19,000/-.

20. Learned Representative for the management argued that the workman was engaged as Service Advisor. He was exercising managerial and supervisory duties. Various technical staff / employees were reporting to him and the workman was responsible for the output of said employees working under him and the said employees were under his direct control. Thus, the workman does not fall within the definition of 'workman' as defined under Section 2(s) of the ID Act. On the other hand, Learned Representative for the workman argued that it is own admission of the management that the workman has dismantled Tata Sumo car, which would prove that the workman was performing mechanical duties. To support his arguments Learned Representative for the workman referred para 3(f) of preliminary objections raised in the written statement wherein the management has stated that in fact before the lock-down he dismantled one Tata Sumo vehicle under his supervision. Learned Representative for the workman referred cross-examination of MW1 wherein he admitted as correct that the workman dismantled the vehicle Tata Sumo. MW1 voluntarily stated that the workman was getting the job done from the mechanics. To my opinion, the plea of the management and version of MW1 that workman got the Tata Sumo vehicle dismantled from the mechanics under his supervision is not trustworthy because the management / MW1 did not name any mechanics who actually dismantled the vehicle. Besides, in the present case the management did not prove in evidence that the workman has any authority to initiate disciplinary proceedings against any of the employees. Therefore, the workman falls within the definition of 'workman' as defined under Section 2(s) of the ID Act. The judgment referred by Learned Representative for the workman titled as **Anand Regional Coop. Oil Seedsgrowers' Union Limited Versus Shaileshkumar Harshadbhai Shah**, reported in **2006 SCC (L&S) 1486** is applicable to the facts of

the present case to an extent. In the said judgment Hon'ble Supreme Court of India has held that primary duties performed by an employee are more important to ascertain whether he is a 'workman' or not and the designation of the employee or the name assigned to his class should not be given undue importance and mere existence of subordinates whose work is required to be supervised is a sine qua non to prove supervisory work and the employee must have authority to initiate departmental proceedings against the sub-ordinates.

21. It is argued by Learned Representative for the management that the workman did not report for duty after 23.03.2020 and abandoned the job. On the other hand, Learned Representative for the workman argued that on 14.05.2020 when the workman went to join his normal duty the management did not allow him to join the duty and verbally informed him that his services have already been terminated. To my opinion, the management's argument that the workman did not report for duty after 23.03.2020 is devoid of merits, because the management in the written statement in para 3 on merits, pleaded that establishment remained under lock down from March, 2020 till 10.06.2020. When the management adhere to the lock down, then the management cannot expect the physical presence of the workers in the establishment during said period. Learned Representative for the management failed to controvert the fact that there was partial lock down in the month of May, 2020 and strength of the workers was limited to certain extent. As discussed above, since the management did not produce the service record of the workman, there is no reason to disbelieve the workman's plea that on 14.05.2020 the management verbally refused him to join duty. Thus, workman is proved to be in employment of the management from 01.10.1999 to 14.05.2020. The workman is proved to have completed continuous service of 240 days in 12 calendar months preceding termination. The workman fulfills the requirement of Section 25B of the ID Act. Once the requirement of Section 25B of the ID Act is fulfilled then the provision of Section 25F of ID Act is attracted which lays down certain conditions precedent to terminate the services of a workman. It would be apposite to reproduce Section 25F of the ID Act :-

"25F. Conditions precedent to retrenchment of workmen. - No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;*
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and*
- (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."*

22. In the present case, the management in the written statement has taken the plea that the workman has prepared some fake documents to support his claim. The documents i.e. training deputation letter dated 31.01.2001, undated certificates i.e. for the period April, 2002 till date, employment till 03.05.2003, employment in 31.01.2006 and employment till September, 2007, certificate dated 21.07.2002, emails, unsigned invoice and ITR are fake. With the aforesaid plea the management has levelled serious allegation against the conduct of the workman. It is settled law that every action of an authority must be fair and reasonable. The authority-employer must follow the procedure to arrive at a decision before taking any action.

Unless the action is taken following the due procedure, which pre-supposes compliance with the principle of natural justice, it cannot fulfil the requirements of reasonableness and fairness. In case, the performance of the workman was not satisfactory, then it was incumbent upon the employer to issue charge sheet and to hold domestic inquiry. Even if it is assumed that the workman absented from duty, in that situation also it amounts to misconduct and a domestic inquiry is, therefore, required to be initiated. To such circumstances, the judgment of Division Bench of Hon'ble High Court of Punjab & Haryana referred by Learned Representative for the workman reported in **2015(29) SCT 301** titled as **O.K. Play India Limited Versus Raj Kumar & Another** is applicable to the facts of the present case to an extent. The relevant para 12 of the judgment is reproduced as below :-

"12. By absenting from their duties, the Workmen might have committed misconduct because when an employee absents from duty unauthorizedly, he, indisputably, commits misconduct. A domestic enquiry is, therefore, required to be initiated. The order of termination/discharge is not a substitute for an order of punishment. If an employee is to be dismissed from service on the ground that he had committed misconduct, he is entitled to an opportunity of hearing. Had such an opportunity of hearing been given to them, the Workmen could have shown that there were compelling reasons for their not reporting on duty. Even a minor punishment could have been granted. The Management, however, precipitated the situation by passing a hasty order of termination of their LPA Nos.939 to 944 of 2013 6 services by striking off their name from its rolls. Thus, finding the labour Court, as affirmed by the learned Single Judge, that services of the Workmen were illegally terminated, does not call for interference."

23. The management in para 9 on merits, of written statement pleaded that the management was not under compulsion to issue process for initiating alleged disciplinary action against the worker. There was no necessity to issue contended show cause notice. The aforesaid plea would prove that neither any charge sheet was issued to the workman nor any domestic inquiry was held by the management therefore, the workman has failed to comply with the principles of natural justice. Furthermore, at the time of termination of services of the workman, none of the conditions incorporated in Section 25F of the ID Act were followed. Therefore, the verbal order of termination of services of the workman w.e.f. 14.05.2020 is illegal and hereby set aside. The workman is entitled for reinstatement with continuity of service and 50% back wages.

24. Accordingly, issues No.1 & 2 are decided in favour of the workman and against the management. Issue No.3 is decided against the management and in favour of the workman.

Issue No. 4 :

25. Onus to prove this issue is on the management.

26. On aggrieved from termination of services by the management, the workman raised industrial dispute and on failure of conciliation proceedings before the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh vide his failure report bearing Memo No.3854 dated 09.10.2020, the workman was left with no other option than to seek remedy before this Court / Tribunal under Section 2A(2) of the ID Act. The present claim statement has been presented with a valid cause of action and locus standi by following the due procedure under the ID Act which is well within the territorial jurisdiction of the present Court / Tribunal. I do not find any defect so far as the maintainability of the present industrial dispute is concerned.

27. Accordingly, this issue is decided against the management and in favour of the workman.

Relief :

28. In the view of foregoing finding on the issues above, this industrial dispute is allowed. The workman is held entitled for reinstatement with continuity of service and 50% back wages. The management is directed to comply with the Award within three months from the date of publication of the same in Government Gazette failing which the management shall be liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this Award till actual realisation. Appropriate Government be informed. Copy of this Award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

Dated : 30.08.2024

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152

Secretary Labour,
Chandigarh Administration.

CHANDIGARH ADMINISTRATION
ENGINEERING DEPARTMENT

Notification

The 1st October, 2024

No. 575.—The Adviser to the Administrator, Union Territory, Chandigarh on the recommendations of Departmental Promotion Committee (Class-I) as well as in terms of the PSEB Service of Engineers (Electrical) Recruitment Regulation, 1965 as amended from time to time, is pleased to promote Er. Vijay Kumar, Assistant Executive Engineer to the next grade of Executive Engineer in the Electricity Wing of the Engineering Department, Union Territory, Chandigarh on regular basis in the pay matrix of Rs.67700-208700 (Level-11 as per 7th CPC) with immediate effect.

He will be on probation for a period of one year from the date of his joining.

(FOR AND ON BEHALF OF ADVISER TO
ADMINISTRATOR, UT, CHANDIGARH)

(Sd.) . . . ,

Executive Engineer (HQ),
For Chief Engineer, UT, Chandigarh.

CHANGE OF NAME

I, Muniyamma D/o Kaliy Prumal # 1001, Vikas Nagar, Mauli Jagran, Chandigarh, have changed my name to Muniyammal.

[1669-1]

I, Naveen Kumar S/o Ram Gopal Naggar R/o H. No. 3524, Maloya Colony, Chandigarh, have changed my name from Naveen Kumar to Naveen Kumar Naggar.

[1670-1]

I, Munish Chaudhary S/o Narinder Chaudhary R/o House No. 2124, Sector 21-C, Chandigarh, have changed my name from Munish Chaudhary to Munish.

[1671-1]

I, Vijay Khanna S/o Late Sh. Shyam Nath Khanna, R/o H. No. 1081, Sector 37-B, Chandigarh, have changed my name from Vijay Khanna to Vijay Kumar Khanna.

[1672-1]

I, Pushpa W/o Umashankar Verma R/o # 3298, Mauli Jagran Complex, Chandigarh, have changed my name from Pushpa to Pushpa Verma.

[1673-1]

I, Muntiaz Ahmad S/o Mohammad Yasin R/o H. No. 150/1, Small Flat Maloya, Maloya Colony, Chandigarh, changed my name to Mumtaz Ahmed.

[1674-1]

I, Sandeep Kumar S/o Parshu Ram R/o H. No. 2009/33, Sector 32-C, Chandigarh my name from Sandeep Kumar to Sandeep Biwal.

[1675-1]

"No legal responsibility is accepted for the contents of publication of advertisements/public notices in this part of the Chandigarh Administration Gazette. Persons notifying the advertisements/public notices will remain solely responsible for the legal consequences and also for any other misrepresentation etc."